

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKx
MARK ORLANDO,

Plaintiff,

v.

DR. GAETAN ZAMILUS,

Defendant.

ORDER

22 CV 6161 (VB)

Copies Mailed/Faxed
Chambers of Vincent L. Briccetti3/21/23
DA

On February 16, 2023, defendant moved to dismiss the complaint. (Doc. #18). With his motion, defendant submitted a copy of a grievance plaintiff filed respecting the injuries from which his claim arises. (Doc. #19-1).

On February 17, 2023, the Court issued an Order directing plaintiff to inform the Court by March 16, 2023, whether he would amend his complaint in response to the motion to dismiss or would rely on his original complaint. (Doc. #23). If plaintiff determined to rely on his original complaint, the Court's February 17 Order informed plaintiff that his opposition to the motion was due March 30, 2023. (*Id.*) The February 17 Order was mailed to plaintiff at the address on the docket.

On March 17, 2023, plaintiff filed an opposition to the motion to dismiss. (Doc. #24). In his opposition, plaintiff requests permission to depose seven individuals, including defendant and other medical care providers, to support his opposition to the motion to dismiss. (Doc. #24 at ECF 1).¹ Plaintiff also attached the superintendent's response to his grievance, as well as a hand-drawn map of the relevant area of Fishkill Correctional Facility, to his opposition. (*Id.* at ECF 10-11).

Accordingly, it is hereby ORDERED:

1. Because plaintiff filed an opposition to the motion, the Court concludes plaintiff does not intend to file an amended complaint and will rely on his original complaint.
2. The Court will not convert the pending motion to dismiss into a motion for summary judgment. Therefore, in deciding the motion, the Court will only rely on extraneous documents to the extent they are attached to the complaint, incorporated by reference in the complaint, or integral to the complaint. See *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010).
3. Plaintiff's request to conduct depositions at this time is DENIED. If the Court denies defendant's motion, plaintiff will be permitted to conduct depositions during discovery.

¹ "ECF __" refers to page numbers automatically assigned by the Court's Electronic Case Filing system.

4. Defendant's reply remains due April 13, 2023.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: March 21, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge